IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.141 OF 2002

Polynova Industries Limited,
a Company incorporated under
the Companies Act, 1956
(Act 1 of 1956), having office
at Kundaim Industrial Estate,
Ponda, Goa, represented herein
by Shri Balwant D. Priolkar,
major of age, Indian National,
having office at Kundaim
Industrial Estate, Ponda, Goa. ... Petitioner.

Versus

1. Regional Provident Fund Commissioner,
Office of the Regional Provident
Fund Commissioner, Bhavishya Nidhi
Bhavan, 24, Patto Plaza Complex,
Panaji, Goa.

2. Shri S. Ramnathan,
Regional Provident Fund Commissioner,
Office of the Regional Provident
Fund Commissioner, Bhavishya Nidhi
Bhavan, 24, Patto Plaza Complex,
Panaji, Goa. ... Respondents.

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. J. Vaz, Addl. Central Govt. Standing Counsel for the respondents.

CORAM : DR. S. RADHAKRISHNAN, J.

DATE : SEPTEMBER 14, 2006.

ORAL JUDGMENT :

1. By this petition, the petitioner company is challenging the summons/notice dated 20.2.2002 issued by the respondent no.2. The brief facts here are that the petitioner company though was not allotted the code number by the Regional Provident Fund Commissioner, the petitioner with the knowledge of respondent no.1 opened a Special Deposit Account with State Bank of India on 8.11.1988 and went on depositing the amount payable by way of Provident Fund of the employees and also informed respondent no.1 of the same by letter dated 8.11.1988. Every month without fail the petitioner has been depositing the amount payable at the said Bank Account as the code number was still not allotted by the Regional Provident Fund Commissioner. Suddenly on 14.2.1992 the petitioner was informed by the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) that the provisions of the said Act would be applicable with effect from the 1.11.1989. In view of the above, the petitioner herein advised the State Bank of India to close the said Bank Account and issue a Demand Draft in favour of respondent no.1. Ultimately the respondent no.1 was pleased to pass an order dated 13.03.1995 determining the amount payable as Rs.14,86,171.10. Immediately on 22.03.1995, the petitioner forwarded the said order of respondent no.1 to State Bank of India urging them to issue necessary

Demand Draft in favour of respondent no.1. The petitioner also took care to inform the respondent no.1 that the petitioner made all necessary arrangements to transfer the amount of Rs.14,86,171.10 from the State Bank of India to respondent no.1 and the same was kept in the said account in absence of the code number being allotted to the petitioner by the respondents. On 14.7.1995 the State Bank of India had informed the petitioner that the amount has been already credited to the Bank account. Inspite of the same the petitioner received a telegraphic communication from the respondent no.1 directing the petitioner to deposit the amount of Rs.14,86,171.10, failing which default prohibitory Order u/s 8-F of the said Act will be issued. On 4.06.1995 State Bank of India informs the respondent that the petitioner had not withdrawn the said amount and that the papers were sent to the Main Branch for closure of the account. The petitioner states that on 30.01.1996 the State Bank of India transferred a sum of Rs.14,09,500/- to the respondent no.1 and also the entire interest that had accrued on the said amount was also been transferred to the respondent no.1 at the instance of the petitioner.

2. On 20.02.2002 to the ulter shock and surprise of the petitioner, the petitioner received a notice after about 6 years calling upon it to show cause as to why damages should not be levied for delay in payment of Provident Fund dues u/s 14-B of the said Act. The matter was fixed for hearing on 5.03.2002. On 5.03.2002 the Advocate for the

petitioner sought a short time as the notice was received after 6 years after the entire amount was paid. Accordingly the matter was postponed to 2.04.2002.

3. On 2.04.2002 the petitioner's representative with his Advocate Mr. M.S. Bandodkar appeared before respondent no.2. The said Advocate Mr. M.S. Bandodkar was accompanied by the Personnel Manager Mr. B.D. Priolkar and both of them appeared before the respondent no.2, Regional Provident Fund Commissioner. It appears that the proceedings commenced with the question as to when the petitioner would pay the amount by way of damages and that the petitioner should answer the question only by way of 'yes or no' as he was not prepared to listen to anything else. It also appears that said Advocate Bandodkar had produced his authority letter and requested for a short adjournment to file reply as there was no delay attributed to the petitioner. In this regard the respondent no.2 flared up stating that he does not recognise any Advocate and that he shall not allow any Advocate to appear before him, and that he shall not even accept the authority letter. The respondent no.2 asked Advocate Bandodkar and Mr. Priolkar to leave the chamber. Thereafter Advocate Bandodkar and Mr. Priolkar had to leave the chamber of respondent no.2. However the same was recorded as to what transpired at the bottom of said letter which is annexed as 'P' to the petition. Immediately thereafter the

petitioner approached this Court and obtained a stay of further proceedings before respondent no.2.

4. The learned counsel for the petitioner emphasized that the respondent no.2 exercising such quasi judicial power ought not to have treated an Advocate in such a manner. The learned Counsel submitted that an Advocate cannot be bulldozed in such a manner. Mr. Sonak, the learned Counsel appearing on behalf of the petitioner brought to my notice the observation in **Telhara Cotton etc. Co. v. Kashinath Gangadhar, (AIR 1940 Nag 110)** wherein it was held "while holding that threat to an Advocate interferes with the due performance of his duty and therefore, amounts to contempt of Court, it was observed that Judges, Advocates and parties, witnesses and all such persons are limbs of judicial proceedings. For proper administration of justice it is essential that all such persons are in the performance of their duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to impair such freedom must necessarily result in tampering with the due administration of the law and interfering with the course of justice and must therefore, be held to constitute Contempt of Court".

In the light of the above, it is clear that the conduct of Respondent no.2 was reprehensible.

5. Under the aforesaid facts and circumstances, the learned counsel for the petitioner submits that the aforesaid show cause notice dated 20.02.2002 ought to be quashed and set aside.

6. The Learned counsel on behalf of the respondent, Mr. Vaz very fairly stated that the conduct of respondent no.2 was not at all proper and fair and Mr. Vaz also states that respondent no.2 has now retired and said post is held by some other officer and as such assures that a fair opportunity of personal hearing will be given to the Petitioner and its Advocate. Having regard to the aforesaid facts and circumstances, both the parties are agreeable that the aforesaid notice dated 20.2.2002 be treated as a show cause notice. The learned counsel for the petitioner states that the petitioner will file a reply with regard to the aforesaid show cause within a period of eight weeks, before the Regional Provident Fund Commissioner, Goa. The petitioner shall appear before the said Regional Provident Fund Commissioner on 14.11.2006 at 10.30 a.m. so as to enable the respondent no.2 to fix the schedule hearing after affording a fair opportunity of personal hearing and pass a reasoned order. Rule is made absolute accordingly, however with no order as to costs.

DR. S. RADHAKRISHNAN, J.

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